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EXAMINER

KUNEMUND, ROBERT M

ART UNIT	PAPER NUMBER
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1765

DATE MAILED: 12/19/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-8

# Office Action Summary

Application No.

09/391,472

Applicant(s)

J. Titani

Examiner

Kynemund

Group Art Unit

1763

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 10/5/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1 to 37 is/are pending in the application.
- Of the above claim(s) 1 to 24, 29 to 34 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 25 to 28 and 35 to 37 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 44
- ☒ Notice of References Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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Claims 1 to 24 and 29 to 34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

### The Rejections

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25 to 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (6,281,518)

The Sato reference teaches a method of epitaxially depositing a layer structure. A substrate is placed in a chamber and then gases of a first III-V compound are flowed over

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the substrate and caused to decompose over the substrate. Then gas content is then changed for the second layer which is grown. The second layer can have nitrogen as a component of the layer. Other layers then can be epitaxially grown the resulting structure. The layers can be composed of differing composition of AlGaInNAs, note entire reference. The sole difference between the instant claims and the prior art is the nitrogen overpressure before deposition. However, in the absence of unobvious results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentations the optimum, operable atmosphere over the layer in the Sato reference in order to prevent volatile escape and passivate the layer.

Claims 35 to 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato (6,281,518)

The Sato reference is relied on for the same reasons as stated, supra, and differs from the instant claims in the aluminum source. However, in the absence of unobvious results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentations the optimum, operable source of aluminum in the Sato reference in order to decompose the aluminum while not introducing impurities.

Examiner's Remarks

The remaining references are merely cited of interest as showing the state of the art.


Any inquiry concerning this communication should be directed to Robert Kunemund at telephone number 703-308-1091.

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RMK



ROBERT KUNEMUND  
PRIMARY EXAMINER